

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
NORTHERN DIVISION

FILED
JUL 11 2016

CLERK

UNITED STATES OF AMERICA,

Plaintiff,

vs.

JASON MARTINEZ,

Defendant.

1:16-CR-10001-CBK

OPINION AND ORDER

Defendant filed a second motion to dismiss the indictment on the basis that a continuance of the trial date violates his rights under the Speedy Trial Act, 18 U.S.C. § 3161. The background is set forth in this Court's previous opinion and order denying the first motion to dismiss, Doc. 34. Since the previous opinion, the government filed a motion to continue the July 12, 2016, trial date. The motion was granted and trial in this matter was continued to August 9, 2016.

The basis of the additional continuance is to allow the F.B.I. laboratory to complete testing on items which will result in the possible consumption of the item and the resulting inability of the defendant to conduct separate testing. The laboratory notified the government on June 15, 2016, that the requested testing would consume the items and requested permission to complete the testing. The defendant notified the government the next day that he did not object to the consumption of the items during testing.

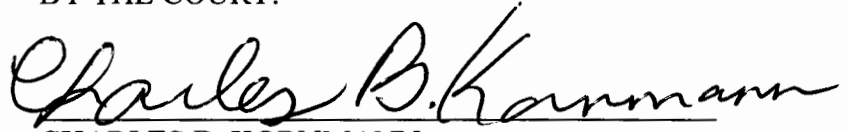
I find that the defendant's statutory right to a more speedy trial has not been violated by the additional four week delay in bringing this matter to trial. As in my previous opinion, I find that the record in this case supports a finding that the additional delay in testing was not "unreasonable or indicative of a lack of diligence." *See United States v. Villarreal*, 707 F.3d 942, 954 (8th Cir. 2013). I further find that the defendant has not been deprived of his federal constitutional right or statutory right to a speedy trial.

Now, therefore,

IT IS ORDERED that defendant's motion, Doc. 39, to dismiss the indictment is denied.

DATED this 11th day of July, 2016.

BY THE COURT:

A handwritten signature in black ink, reading "Charles B. Kornmann". The signature is written in a cursive style with a horizontal line underneath the name.

CHARLES B. KORNMAN
United States District Judge